

No. 14725

United States
Court of Appeals
for the Ninth Circuit

FRANKLIN SANTOS BOHOL and HENRY
TORRES DIAS, Appellants,
vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Hawaii

FILED

JUL 14 1957

WILLIAM C. GIBSON, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For the Appellee: United States of America,

LOUIS B. BLISSARD,
United States Attorney,
Federal Building,
Honolulu, T. H.

For the Appellants:

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS,
GEORGE Y. KOBAYASHI,
Room 1, Campbell Block,
Honolulu, Hawaii.

Cr. No. 10906

INDICTMENT

Count I.

Count II.

That on or about November 8, 1954, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Franklin Santos Bohol and Henry Torres Dias, the identical persons named in Count I of this Indictment, did

knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford Kim Hee Kam a narcotic drug, to wit, nine (9) capsules containing heroin hydrochloride, which narcotic drug was not then and there in the original stamped package and was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Count III.

The Grand Jury Further Charges:

That on or about November 9, 1954, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Franklin Santos Bohol and Henry Torres Dias, the identical persons named in Counts I and II of this Indictment, did wilfully, unlawfully and feloniously, fraudulently and knowingly sell to Clifford Kim Hee Kam a narcotic drug, to wit, ten (10) capsules containing heroin hydrochloride, after importation, knowing the said narcotic drug to have been imported into the United States contrary to law, in violation of Title 21, United States Code, Section 174.

Count IV.

The Grand Jury Further Charges:

That on or about November 9, 1954, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Franklin Santos Bohol and Henry Torres Dias, the identical persons named in Counts I, II and III of this Indictment, did knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford

Kim Hee Kam a narcotic drug, to wit, ten (10) capsules containing heroin hydrochloride, which narcotic drug was not then and there in the original stamped package and was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Dated: Honolulu, T. H., this 13th day of December, 1954.

A True Bill.

/s/ ROBERT W. CHALMERS,
Foreman, Grand Jury
/s/ LOUIS B. BLISSARD,
United States Attorney

[Endorsed]: Filed December 13, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find the defendants:

As to Count I: Franklin Santos Bohol, Guilty;
Henry Torres Dias, Guilty.

As to Count II: Franklin Santos Bohol, Guilty;
Henry Torres Dias, Guilty.

As to Count III: Franklin Santos Bohol, Guilty;
Henry Torres Dias, Guilty.

As to Count IV: Franklin Santos Bohol, Guilty;
Henry Torres Dias, Guilty.

as charged in the indictment herein.

Dated: Honolulu, T. H., this 18th day of January, 1955.

/s/ WILLIAM B. FAIMON,
Foreman

[Endorsed]: Filed January 18, 1955.

In the District Court of the United States
for the District of Hawaii

No. 10,906—Cr.

United States of America vs. Franklin Santos
Bohol and Henry Torres Dias.

JUDGMENT AND COMMITMENT

On this 19th day of January, 1955, came the attorney for the government and the defendant Henry Torres Dias appeared in person and by counsel, George Kobayashi, Esq.,

It is Adjudged that the defendant has been convicted upon his plea of not guilty as to all Counts and a verdict of guilty as to Counts I, II, III and IV of the offense of wilfully, unlawfully and feloniously, fraudulently and knowingly selling to another narcotic drugs, after importation, knowing said narcotic drugs to have been imported into the U. S. contrary to law, in violation of 21 USC §174; and of knowingly, wilfully, unlawfully and feloniously selling, dispensing and distributing to another narcotic drugs which were not then and there in the original stamped package or from the original

stamped package, in violation of 26 USC §2553(a) as charged in Counts I, II, III and IV and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years as to Count I.

It Is Further Adjudged that the defendant pay a fine in the sum of One Dollar (\$1.00).

It Is Ordered that sentence as to Counts II, III and IV be imposed after receipt of pre-sentence report from the Probation Officer.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,

United States District Judge

/s/ WM. F. THOMPSON, JR.,

Clerk

Marshal's Return attached.

In the District Court of the United States
for the District of Hawaii

No. 10,906—Cr.

United States of America vs. Franklin Santos
Bohol and Henry Torres Dias.

JUDGMENT AND COMMITMENT

On this 9th day of February, 1955, came the attorney for the government and the defendant Henry Torres Dias appeared in person and by counsel; George Kobayashi, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty as to all Counts and a verdict of guilty as to Counts I, II, III and IV of the offense of wilfully, unlawfully and feloniously, fraudulently and knowingly selling to another narcotic drugs, after importation, knowing said narcotic drugs to have been imported into the U. S. contrary to law, in violation of 21 USC, §174; and of knowingly, wilfully, unlawfully and feloniously selling, dispensing and distributing to another narcotic drugs which were not then and there in the original stamped package or from the original stamped package, in violation of 26 USC, §2553(a) as charged in Counts I, II, III and IV and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years as to Count II, to run concurrently with sentence imposed under Count I; Five (5) Years as to Count III, and Five (5) Years as to Count IV, to run concurrently with each other, but consecutive to sentences imposed as to Counts I and II.

Sentence of imprisonment under Count II to begin as of January 19, 1955.

It Is Further Adjudged that defendant pay a fine in the sum of One Dollar (\$1.00) as to each of Counts II, III and IV.

Mittimus issued forthwith.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,

United States District Judge

/s/ WM. F. THOMPSON, JR.,

Clerk

Marshal's Return attached.

In the District Court of the United States
for the District of Hawaii

No. 10,906—Cr.

United States of America vs. Franklin Santos
Bohol and Henry Torres Dias.

JUDGMENT AND COMMITMENT

On this 19th day of January, 1955 came the attorney for the government and the defendant Franklin Santos Bohol appeared in person and by counsel; George Kobayashi, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty as to all Counts and a verdict of guilty as to Counts I, II, III and IV of the offense of wilfully, unlawfully and feloniously, fraudulently and knowingly selling to another narcotic drugs, after importation, knowing said narcotic drugs to have been imported into the U. S. contrary to law, in violation of 21 USC §174; and of knowingly, wilfully, unlawfully and feloniously selling, dispensing and distributing to another narcotic drugs which were not then and there in the original stamped package or from the original stamped package, in violation of 26 USC §2553(a) as charged in Counts I, II, III and IV and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years as to Count I.

It Is Further Adjudged that the defendant pay a fine in the sum of One Dollar (\$1.00).

It Is Ordered that sentence as to Counts II, III and IV be imposed after receipt of pre-sentence report from the Probation Officer.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,

United States District Judge

/s/ WM. F. THOMPSON, JR.,

Clerk

Marshal's Return attached.

In the District Court of the United States
for the District of Hawaii

No. 10,906—Cr.

United States of America vs. Franklin Santos
Bohol and Henry Torres Dias.

JUDGMENT AND COMMITMENT

On this 9th day of February, 1955, came the attorney for the government and the defendant Franklin Santos Bohol appeared in person and by counsel; George Kobayashi, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty as to all Counts and a verdict of guilty as to Counts I, II, III and IV of the offense of wilfully, unlawfully and feloniously, fraudulently and knowingly selling to another narcotic drugs, after importation, knowing said narcotic drugs to have been imported into the U. S. contrary to law, in violation of 21 USC, §174; and of knowingly, wilfully, unlawfully and feloniously selling, dispensing and distributing to another narcotic drugs which were not then and there in the original stamped package or from the original stamped package, in violation of 26 USC, §2553(a) as charged in Counts I, II, III and IV and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years as to Count II, to run concurrently with sentence imposed under Count I; Five (5) Years as to Count III, and Five (5) Years as to Count IV, to run concurrently with each other, but consecutive to sentences imposed as to Counts I and II.

Sentence of imprisonment under Count II to begin as of January 19, 1955.

It Is Further Adjudged that defendant pay a fine in the sum of One Dollar (\$1.00) as to each of Counts II, III and IV.

Mittimus issued forthwith.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,
United States District Judge
/s/ WM. F. THOMPSON, JR.,
Clerk

Marshal's Return attached.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Offenses: Appellants were charged on four counts as follows:

Count I.

Appellants were charged with wilfully, unlawfully and feloniously, fraudulently and knowingly sell to Clifford Kim Hee Kam a narcotic drug, to-wit, nine (9) capsules containing heroin hydrochloride, after importation, knowing the said narcotic drug to have been imported into the United States contrary to law, in violation of Title 21, United States Code, Section 174.

Count II.

Appellants were charged with knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford Kim Hee Kam a narcotic drug, to-wit, nine (9) capsules containing heroin hydrochloride, which narcotic drug was not then and there in the original stamped package and was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Count III.

Appellants were charged with wilfully, unlawfully and feloniously, fraudulently and knowingly sell to Clifford Kim Hee Kam a narcotic drug, to-wit, ten (10) capsules containing heroin hydrochloride, after importation, knowing the said narcotic drug to have been imported into the United States contrary to law, in violation of Title 21, United States Code, Section 174.

Count IV.

Appellants were charged with knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford Kim Hee Kam a narcotic drug, to-wit, ten (10) capsules containing heroin hydrochloride, which narcotic drug was not then and there in the original stamped package and was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Judgment: Upon the verdict of the jury, Appellants were adjudged guilty on each and every count and sentenced on the 19th day of January, 1955 on

Count I to the maximum term of five years imprisonment and to pay a fine of One Dollar (\$1.00).

Name of Institution Where Now Confined: Oahu Penitentiary, Honolulu, Territory of Hawaii, after denial of bail pending appeal.

The above named Appellants hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated: Honolulu, Hawaii, January 24, 1955.

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS

By their Attorney

/s/ GEORGE Y. KOBAYASHI

[Endorsed]: Filed January 24, 1955.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Offenses: Appellants were charged on four counts as follows:

Count I.

Appellants were charged with wilfully, unlawfully and feloniously, fraudulently and knowingly sell to Clifford Kim Hee Kam a narcotic drug, to-wit, nine (9) capsules containing heroin hydrochloride, after importation, knowing the said narcotic drug to have been imported into the United States contrary to law, in violation of Title 21, United States Code, Section 174.

Count II.

Appellants were charged with knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford Kim Hee Kam a narcotic drug, to-wit, nine (9) capsules containing heroin hydrochloride which narcotic drug was not then and there in the original stamped package and was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Count III.

Appellants were charged with wilfully, unlawfully and feloniously, fraudulently and knowingly sell to Clifford Kim Hee Kam a narcotic drug, to-wit, ten (10) capsules containing heroin hydrochloride, after importation, knowing the said narcotic drug to have been imported into the United States contrary to law, in violation of Title 21, United States Code, Section 174.

Count IV.

Appellants were charged with knowingly, wilfully, unlawfully and feloniously sell, dispense and distribute to Clifford Kim Hee Kam a narcotic drug, to-wit, ten (10) capsules containing heroin hydrochloride, which narcotic drug was not from the original stamped package, in violation of Title 26, United States Code, Section 2553(a).

Judgment: Upon the verdict of the jury, Appellants were adjudged guilty on each and every count and sentenced on the 19th day of January, 1955 on Count I to the maximum term of five years

imprisonment and to pay a fine of One Dollar (\$1.00). Appellants were then sentenced on February 9, 1955 on Counts II, III, and IV to the maximum terms of five years imprisonment and to pay the fines of One Dollar (\$1.00) on each of said Counts II, III and IV.

Sentence of imprisonment under Count II is to run concurrently with the sentence imposed on Count I and to begin as of January 19, 1955; and sentences of imprisonment under Counts III and IV are to run concurrently with each other, but consecutively to Counts I and II.

Name of Institution Where Now Confined: Oahu Penitentiary, Honolulu, Territory of Hawaii, after denial of bail pending appeal.

The above named Appellants hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated: Honolulu, Hawaii, February 16, 1955.

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS

By Their Attorney

/s/ GEORGE Y. KOBAYASHI

[Endorsed]: Filed February 16, 1955.

[Title of District Court and Cause.]

MOTION FOR BAIL PENDING APPEAL—
AFFIDAVIT AND POINTS AND AUTH-
ORITIES ON SUBSTANTIAL QUESTION
ON APPEAL AS GROUND FOR BAIL
PENDING REVIEW

Motion For Bail Pending Appeal

Comes now Franklin Santos Bohol and Henry Torres Dias, Defendants above named, by their attorney, George Y. Kobayashi, and move this Honorable Court for bail pending appeal.

Defendants respectfully represent unto this Court:

That on the 13th day of December, 1954, Defendants were indicted in four counts for violation of Title 21, United States Code, Section 174, and Title 26, United States Code, Section 2553(a).

That on the 17th day of December, 1954, Defendants were arraigned in the United States District Court for the District of Hawaii, and on the 23rd day of December, 1954, they entered a plea of not guilty to said indictment and trial thereof was set for the 18th day of January, 1955;

That on the 19th day of January, 1955, Defendants were found guilty by a jury, after trial on all four counts of said indictment; that upon verdict Defendants' bail were immediately cancelled and Defendants incarcerated in the Oahu Penitentiary, Honolulu, Hawaii;

Upon the verdict of the jury, Defendants were adjudged guilty on each and every count and sen-

tenced on the 19th day of January, 1955 on Count I to the maximum term of five years imprisonment and to pay a fine of One Dollar (\$1.00). Defendants were then sentenced on February 9, 1955 on Counts II, III, and IV to the maximum terms of five years imprisonment and to pay the fines of One Dollar (\$1.00) on each of said Counts II, III, and IV. Sentence of imprisonment under Count II is to run concurrently with the sentence imposed on Count I and to begin as of January 19, 1955; and sentences of imprisonment under Counts III and IV are to run concurrently with each other, but consecutively to Counts I and II;

That on the 24th day of January, 1955, a Notice of Appeal was filed with the Clerk of said Court;

That on the 16th day of February, 1955, an Amended Notice of Appeal was filed with the Clerk of said Court.

That this motion is made by Defendants for purpose of obtaining bail pending appeal; that the complete transcript of the record not being available, there is filed herewith the Affidavit of Counsel, showing the essence of substantial questions to be determined in this Court.

Dated at Honolulu, Hawaii, this 28th day of February, 1955.

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS,
Defendants

/s/ By GEORGE Y. KOBAYASHI,
Their Attorney

Affidavit of George Y. Kobayashi
Territory of Hawaii,
City and County of Honolulu—ss.

Comes now George Y. Kobayashi and being first duly sworn on oath, deposes and says:

That he is and at all times subsequent to the indictment of Defendants above named, has been the attorney for Defendants;

That the District Court erred in allowing the United States Attorney to ask of the Defendant, Franklin Santos Bohol, whether he had been convicted of a crime in 1954 and openly naming the date of said conviction; that the Defendant, Franklin Santos Bohol, had not been convicted of the crime in question; that the question was objected by counsel of the Defendants, and was prejudicial to both Defendants;

That the allowing by this District Court Judge of the question put to the Defendant, Franklin Santos Bohol, presents a substantial question on appeal entitling both Defendants to bail pending review; and

That the motion herein is well taken in law and is not frivolous nor taken for the purpose of delay;

And further affiant sayeth not other than that this affidavit is made for the purpose of complying with the provisions of Rule 17 of the Rules of the Court in the case of a motion for bail pending appeal, there being no available complete transcript of the record on appeal.

/s/ GEORGE Y. KOBAYASHI,
Attorney for Defendants

Points and Authorities on Substantial Question on
Appeal as Ground For Bail Pending Review

Appellants rely upon *Mitrovich vs. United States*,
(CCA 9) 15 F.2d 163;

In the above case the trial Court, on cross-examination, permitted counsel to ask the witness if he had been arrested on a previous occasion, and witness answered. The ruling admitting the testimony was held to be both erroneous and prejudicial.

The Court quoting *Glover vs. United States*, (174 F. 426, 77 CCA 450) states:

“It is competent for the purpose of discrediting a witness to show that he has been convicted of a crime. The general rule is that the crime must rise to the dignity of a felony or petit larceny. Whatever may be the limit in this respect, nothing short of a conviction of a crime is admissible for the purpose of impeachment. A mere accusation or indictment will not be admitted for the reason that innocent men are often arrested and charged with a criminal offense.”

Dated at Honolulu, Hawaii, this 1st day of
March, 1955.

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS,

Appellants

/s/ By GEORGE Y. KOBAYASHI,
Their Attorney

[Endorsed]: Filed March 2, 1955.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO PERFECT RECORD

It Is Hereby Ordered That Franklin Santos Bohol and Henry Torres Dias, Defendants in the above entitled cause, who heretofore filed a Notice of Appeal, on January 24, 1955, and an Amended Notice of Appeal on February 16, 1955, to the United States Court of Appeals for the Ninth Circuit from the Judgment entered therein, may have up to and including the 19th day of April, 1955, within which to file and docket the record on appeal with the United States Court of Appeals for the Ninth Circuit.

Dated at Honolulu, Hawaii, this 2nd day of March, 1955.

/s/ J. FRANK McLAUGHLIN,
Judge, U. S. District Court for the
District of Hawaii

[Endorsed]: Filed March 2, 1955.

DEFENDANTS' EXHIBIT "A"

Marked for Identification 3-10-55

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

Cr. No. 25915

TERRITORY OF HAWAII vs. FRANKLIN
SANTOS BOHOL, Defendant.

Possession of Marihuana

MOTION FOR NOLLE PROSEQUI AND
ORDER OF NOLLE PROSEQUI

Motion for Nolle Prosequi

Comes now the Territory of Hawaii, by George F. St. Sure, Esq., Assistant Public Prosecutor of the City and County of Honolulu, and hereby respectfully moves that this Honorable Court approve a motion for nolle prosequi in the above entitled cause on the ground that the evidence is insufficient to warrant further prosecution.

Wherefore, it is respectfully prayed that a nolle prosequi be entered herein.

Dated at Honolulu, T. H., this 24th day of September, A.D. 1953.

TERRITORY OF HAWAII,
/s/ By GEORGE F. ST. SURE,
Assistant Public Prosecutor

Order of Nolle Prosequi

The foregoing motion is approved and allowed

and it is hereby ordered that a nolle prosequi be entered herein.

Dated at Honolulu, T. H., this 25 day of September, A.D. 1953.

/s/ A. M. FELIX,

Judge of the above entitled
Court

[Endorsed]: Filed September 25, 1953.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 171, consists of a statement of the names and addresses of the attorneys of record, and of the various pleadings, transcripts of proceedings, and a document marked for identification as hereinbelow listed and indicated:

Indictment.

Verdict.

Judgment and Commitment, Henry Torres Dias,
January 19, 1955.

Judgment and Commitment, Henry Torres Dias,
February 9, 1955.

Judgment and Commitment, Franklin Santos Bohol, January 19, 1955.

Judgment and Commitment, Franklin Santos Bohol, February 9, 1955.

Notice of Appeal.

Amended Notice of Appeal.

Motion for Bail Pending Appeal, Affidavit and Points and Authorities on Substantial Question on Appeal as Ground for Bail Pending Review.

Order Extending Time to Perfect Record.

Defendants' Exhibit "A" marked for identification.

Transcript of Proceedings, January 18, 1955.

Transcript of Proceedings, March 10, 1955.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 12th day of April, A.D. 1955.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S. District Court, Honolulu, T. H., on January 18, 1955, at 9:00 a.m.

Before Hon. Jon Wiig, Judge, and a jury.

Appearances: Louis B. Blissard, U. S. Attorney, and Charles B. Dwight, Asst. U. S. Attorney, ap-

pearing for the Plaintiff. George Y. Kobayashi, appearing for the Defendants. [27*]

FRANKLIN SANTOS BOHOL

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

* * * * * [125]

Q. (By Mr. Kobayashi): And, Mr. Bohol, you were convicted once for possession of marijuana in the Territory? A. Yes, sir.

Q. It was a misdemeanor? A. Misdemeanor.

Mr. Kobayashi: That's all. * * * * *

Cross Examination

Q. (By Mr. Blissard): Mr. Bohol, when were you convicted of marijuana? A. It was '51.

Q. 1951? A. 1951.

Q. Is that the only time you have been convicted of a marijuana or narcotic offense?

A. Yes, sir. [126]

Q. Weren't you convicted in the District Court in Honolulu in 1953 again for possession of marijuana?

A. You mean since? Marijuana seeds?

Q. Were you convicted in 1953 for the possession of marijuana seeds? Is that what you are saying?

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Franklin Santos Bohol.)

Mr. Kobayashi: Your Honor, I object. If counsel knows anything about these convictions—I don't know about these convictions.

The Court: I assume that Mr. Blissard knows what he is doing, Mr. Kobayashi.

Q. (By Mr. Blissard): Were you or were you not convicted in July, 1953, for possession of marijuana? A. Yes.

Q. So you had been convicted twice?

A. But I didn't go to jail for it.

Q. You didn't go to jail for it?

* * * * * [127]

[Endorsed]: Filed April 4, 1955.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter held in the U. S. District Court, Honolulu, T. H., on March 10, 1955, at 2:00 p.m., before Hon. Jon Wiig, Judge. [157]

* * * * *

Mr. Kobayashi: Well, your Honor, the only questions that Mr. Blissard is entitled to ask are convictions. And here, as I understand it, Mr. Blissard had the records before him, he was asking these questions from a sheet on which he had a list of convictions. And first he asked him if there was a conviction in '51. That was the conviction we asked about.

The Court: That is right.

Mr. Kobayashi: Then he asked about a conviction in '53. Now, my contention is that under the Rule in the Mitrovich case Mr. Blissard could not have asked that question, because there was a conviction—it was a District Court conviction—but on a trial de novo there was an order of nolle prosequi entered. It is no different than asking a person for any arrests, especially in a case where there was no conviction at all. As far as the record is concerned, there was no conviction at all. Under our [161] Territorial law, when a case is appealed to the Circuit Court, then it becomes a trial de novo. There is no conviction there, especially in the case where an order of nolle prosequi is entered. I asked him a question. He is entitled to question him on convictions, your Honor, I grant you that.

The Court: But he is entitled to cross-examine on matters brought out by you on direct examination.

Mr. Kobayashi: Yes, but not—the man answered one conviction. That was his answer, one conviction. Correction. He said there was one conviction in 1951, and then on cross examination he answered the question, there was one conviction in 1951. Then he was asked the question concerning 1953.

The Court: Well, he had been convicted in the District Court of a marijuana offense in 1953, but he appealed to the Circuit Court; is that correct?

Mr. Kobayashi: That is correct, yes.

The Court: All right. Well, as I understand it, that was not for the purpose of showing the prior conviction but for the purpose of testing the credi-

bility of the witness. He said that he had been convicted once, whereas, in fact, he had been convicted twice, regardless of whether or not an appeal had been taken. And I think that was a matter for you to clarify, if it needed any clarification, on [162] redirect examination. He was your witness.

Mr. Kobayashi: Well, your Honor, it was impossible for me at that time to know about these convictions. I didn't have any records before me. He knew, as far as Mr. Blissard is concerned. I thought maybe there was another conviction that I didn't know anything about. He could have pleaded guilty to another case without my knowledge, your Honor. But as far as I knew, there was one conviction. I spoke to this defendant. He said there was one conviction in 1951. Now, the other case, I knew there was one in '53 which was nolle prosequied. That I knew of. Now, there could have been another one in '53. And I objected at that time and the Court said, "Mr. Blissard knows what he is doing." I thought he needed the record before him because he was looking at this record of convictions. And the reason why I am offering this order of nolle prosequi is to show there was no conviction in '53. That was appealed and nolle prosequied. That is no conviction under the Territorial statutes where when a case is appealed from the District Court it is back to a trial de novo. By becoming a trial de novo, the conviction or acquittal in the Circuit Court becomes his record. Let's carry it a step further. Let's say there was a conviction in the District Court and it is appealed to the Circuit

Court and let's say there was an acquittal. Surely the Court [163] could not say that man was convicted of any crime. He wasn't convicted of any crime at all. His record would be clear. And that is the point that I want to bring out with this order of nolle prosequi, to show that there was no conviction at all in this '53 case. Otherwise, every person that has been convicted in a District Court and is subsequently tried in the Circuit Court and acquitted would have a record. They would have a conviction if we do not hold otherwise, especially in our jurisdiction where any trial in the Circuit Court is a trial de novo. And it was for that reason that I felt and believed that the order of nolle prosequi in the Circuit Court, a certified copy, would be admissible in evidence at this time, because there was an error committed.

* * * * *

[Endorsed]: Filed April 8, 1955.

[Endorsed]: No. 14725. United States Court of Appeals for the Ninth Circuit. Franklin Santos Bohol and Henry Torres Dias, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed: April 13, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14725

FRANKLIN SANTOS BOHOL and HENRY
TORRES DIAS, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINT

Comes now Franklin Santos Bohol and Henry Torres Dias, Appellants above named, by George Y. Kobayashi, their attorney, and hereby makes their statement of point intended to be relied upon on appeal, to-wit:

That the Court erred in allowing the United States Attorney to question one of the Defendants, Franklin Santos Bohol, about his conviction of a marihuana offense of which he was convicted in the District Court of Honolulu, Territory of Hawaii, but which on appeal, was nolle prosequied in the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

Dated at Honolulu, Hawaii, this 12th day of April, 1955.

FRANKLIN SANTOS BOHOL and
HENRY TORRES DIAS,

Appellants,

/s/ By GEORGE Y. KOBAYASHI,

Their Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed April 13, 1955. Paul P.
O'Brien, Clerk.

